[Cite as *State v. Gunzenhauser*, 2010-Ohio-761.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-21
CHRISTOPHER N. GUNZENHAUSER	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Ashland Municipal Court Case No. 09-CR-B-00232
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	February 24, 2010

APPEARANCES:

For Plaintiff-Appellee:

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Assistant Director of Law
1213 E. Main St.
Ashland, Ohio 44805

For Defendant-Appellant:

JOHN L. GOOD 0056179
930 Claremont Avenue
Ashland, Ohio 44805

Delaney, J.

{¶1} Defendant-Appellant, Christopher Gunzenhauser, appeals his conviction for one count of possession of drug paraphernalia, in violation of Ashland Codified Ordinance 513.12(c)(1), a misdemeanor of the fourth degree. The facts which serve as the basis for Appellant's conviction are as follows:

{¶2} On March 22, 2009, Officer Aaron Kline initiated a traffic stop of Appellant's car after observing that Appellant's car had a faulty brake light. Specifically, Officer Kline observed that Appellant's right rear brake light was not working. Officer Kline stated that the left rear brake light was working and that a brake light located in the rear window of the vehicle was also working.

{¶3} As Officer Kline approached Appellant's vehicle, he smelled a strong odor of cologne. He testified that in his experience, such an excessive amount of cologne is often used to mask the smell of marijuana in a car. Officer Kline called for the K9 unit and asked Appellant if he had any drugs in the car. Appellant admitted that he had marijuana and also drug paraphernalia in the vehicle. As a result, Appellant was charged with one count of Possession of Marijuana, in violation of Ashland Codified Ordinance 513.03, and one count of Possession of Drug Paraphernalia, in violation of Ashland Codified Ordinance 513.12.[1]

{¶4} On April 10, 2009, Appellant entered pleas of not guilty to both charges in Ashland Municipal Court. He then filed a Motion To Suppress the physical evidence and statements obtained by the State as a result of the traffic stop, claiming that the stop was illegal and that any evidence obtained as a result of that stop should be

[1] Appellant was not charged with a violation of R.C. 4513.071. The car was registered to Appellant's father, who admitted guilt to that violation. Tr. 13.

suppressed. At the suppression hearing, the State argued that Officer Kline stopped Appellant in accordance with R.C. 4513.071. which states:

{¶5} "Every motor vehicle, trailer, semitrailer, and pole trailer when operated upon a highway shall be equipped with two or more stop lights, except that passenger cars manufactured or assembled prior to January 1, 1967, motorcycles, and motor-driven cycles shall be equipped with at least one stop light. Stop lights shall be mounted on the rear of the vehicle, actuated upon application of the service brake, and may be incorporated with other rear lights. Such stop lights when actuated shall emit a red light visible from a distance of five hundred feet to the rear, provided that in the case of a train of vehicles only the stop lights on the rear-most vehicle need be visible from the distance specified."

{¶6} In its ruling denying Appellant's motion, the trial court determined that it did not need to make a ruling with respect to whether R.C. 4513.071 had been violated; rather, the court determined that even if the officer was mistaken as to the applicable law, as long as the stop was objectively reasonable, then the stop was not illegal. Appellant then pled no contest to the drug paraphernalia charge and the possession charge was dismissed.

{¶7} Appellant now appeals the trial court's decision and raises one Assignment of Error:

{¶8} "I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS, WHEN IT EXTENDED THE "GOOD FAITH EXCEPTION" TO THE EXCLUSIONARY RULE TO INCLUDE A LAW ENFORCEMENT OFFICER'S MISTAKE REGARDING A MATTER OF LAW, AS OPPOSED TO A MATTER OF FACT."

I.

{¶9} In his sole assignment of error, Appellant argues that the trial court erred in refusing to suppress evidence obtained as the result of a traffic stop. We disagree.

{¶10} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long* (1998), 127 Ohio App.3d 328, 713 N.E.2d 1. During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, (1996), 75 Ohio St.3d 148, 661 N.E.2d 1030. A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Metcalf* (1996), 111 Ohio App.3d 142, 675 N.E.2d 1268. Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141.

{¶11} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 Ohio B. 57, 437 N.E.2d 583; and *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141. Second, an appellant may argue that the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. Finally, an

appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 623, 620 N.E.2d 906.

{¶12} The issue in this case is whether the application of the exclusionary rule may be avoided with respect to evidence obtained by a police officer as a result of a traffic stop based on conduct observed by the officer that the officer mistakenly, but reasonably, believes to constitute a violation of the law.

{¶13} The exclusionary rule for evidence obtained as a result of an unlawful search and seizure is a rule of purely federal construction. *State v. Greer* (1996), 114 Ohio App.3d 299, 303, 683 N.E.2d 82. "Ohio has no independent exclusionary rule for evidence obtained as a result of an unlawful search and seizure." Id., citing *State v. Mapp* (1960), 170 Ohio St. 427, 166 N.E.2d 387, reversed on other grounds sub nom. *Mapp v. Ohio* (1961), 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081.

{¶14} The exclusionary rule is subject to exceptions. Among these exceptions is the good-faith exception set forth in *United States v. Leon* (1984), 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677. In *Leon*, the Supreme Court referred to the competing interests of presenting probative, reliable evidence in criminal cases versus avoiding unreasonable searches and seizures. The court made the following observation:

{¶15} "An objectionable collateral consequence of this interference with the criminal justice system's truth-finding function is that some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains. Particularly

when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system. Indiscriminate application of the exclusionary rule, therefore, may well 'generat[e] disrespect for the law and administration of justice.'" Id. at 907-908, 104 S.Ct. at 3412, 82 L.Ed.2d at 688-689.

{¶16} Under limited circumstances, courts have held that the exclusionary rule may be avoided with respect to evidence obtained in a stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law. *City of Wilmington v. Conner* (2001), 144 Ohio App.3d 735, 740, 761 N.E.2d 663, citing *State v. Greer* (1996), 114 Ohio App.3d 299, 300-301, 683 N.E.2d 82. Such cases necessarily involve a mistake of law rather than a mistake of fact. "Because courts must be cautious in overlooking a police officer's mistakes of law, the mistake must be objectively reasonable." Id.; see also *People v. Teresinski* (1980), 26 Cal.3d 457, 462-464.

{¶17} Where a statute is vague or ambiguous, or requires judicial construction to determine its scope or meaning, exceptional circumstances exist which permit courts to extend the good faith exception to the exclusionary rule to not only mistakes of fact, but also mistakes of law. See e.g., *Greer*, supra, at 303.

{¶18} This exception to the exclusionary rule must be "narrowly tailored in order to avoid giving police officers the incentive to construe statutes and ordinances broadly for the purpose of finding a violation" upon which to predicate a stop. The police officer must be held to a higher standard of knowledge of the law than would be appropriate for

an ordinary citizen, since it is the police officer's special function to apply and to enforce laws. The police officer's mistake of law must be objectively reasonable.

{¶19} The statute in question before us is not free from ambiguity. R.C. 4513.071 states that a vehicle must have "two or more" stoplights on the rear of the vehicle. It goes on to state, "Stop lights shall be mounted on the rear of the vehicle, actuated upon application of the service brake, and may be incorporated with other rear lights. Such stop lights when actuated shall emit a red light visible from a distance of five hundred feet to the rear, provided that in the case of a train of vehicles only the stop lights on the rear-most vehicle need be visible from the distance specified." The statute does not state that *only* two of the lights have to be mounted on the rear of the vehicle or that *only* two of the lights shall emit a red light visible from a distance of five hundred feet. While the Fourth and Twelfth Districts have interpreted this statute to mean that a vehicle only has to have two lights working at any given time, we believe that an additional reasonable interpretation of the statute could be that all stoplights on the rear of the vehicle, of which there must be a minimum of two, shall be working at all times. See *State v. McGeorge*, 12th Dist. No. CA 2007-02-022, 2008-Ohio-1480; see also *State v. Salyers* (July 31, 1995), 4th Dist. No. 94-CA-30.

{¶20} Further adding to this multiple interpretation quandary, the trial court in the present case stated to the prosecutor and to defense counsel, when making its ruling, "I see you both wrestling with the construction of Section 4513.071 to do with stoplights. The Court is further wrestling with that construction. The statute is not a very artfully drafted statute. There is a line of cases that determine that even if the officer is mistaken as to whether he had the right to stop, if the mistake was objectively

reasonable, then the stop is proper. So I'm determining that even if, even if you're right, Mr. Good, the officer's mistake in this case was objectively reasonable. And that would not cause me to determine that the stop was unlawful."

{¶21} The trial court did not, at the suppression hearing, determine whether the officer was actually mistaken in his understanding of the law. Rather, the court solely determined that if the officer was mistaken, then his mistake was a reasonable one.

{¶22} We are satisfied with the trial court's ruling and find that Officer Kline's belief was a reasonable one. Given that the trial court as well as the attorneys were struggling with the interpretation of R.C. 4513.071, in our view, a police officer then could reasonably believe that Appellant committed a violation of R.C. 4513.071. We find Officer Kline's interpretation of R.C. 4513.071 to therefore be objectively reasonable.

{¶23} Appellant's assignment of error is overruled.

{¶24} For the foregoing reasons, the judgment of the Ashland Municipal Court is affirmed.

By: Delaney, J.

Edwards, P.J. and

Hoffman, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. WILLIAM B. HOFFMAN

{¶25} I concur in the majority's analysis and disposition of Appellant's assigned error.

{¶26} I write separately only to note my agreement with the Fourth and Twelfth Districts' interpretation of R.C. 4513.071. While such agreement may well have served Appellant's father had he contested his citation for violation of that statute, it is of no avail to Appellant herein for the reasons enunciated by the majority.

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HON. WILLIAM B. HOFFMAN

[Cite as *State v. Gunzenhauser*, 2010-Ohio-761.]

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHRISTOPHER N. GUNZENHAUSER	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-21
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Ashland Municipal Court is affirmed. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

_____
HON. JULIE A. EDWARDS

_____
HON. WILLIAM B. HOFFMAN